IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)
Plaintiff,)) 4:13CR3016)
V.)
GUSTAVO ARMENTA TRUJILLO,) MEMORANDUM AND ORDER
Defendant.))
)

The defendant has filed what appears to be a § 2255 motion based upon *Johnson v. United States*, 135 S.Ct. 2551(June 26, 2015). *See also Welch v. United States*, No. 15-6418, 2016 WL 1551144 (U.S. Apr. 18, 2016). The Federal Public Defender was appointed, but has now been given leave to withdraw because the Defender concluded that the defendant has no non-frivolous claims for relief under *Johnson*.

Because it is undisputed that the defendant was convicted of a prior felony involving the delivery or intent to deliver a controlled substance and because the defendant was convicted of a prior burglary (filing no. $\underline{43}$ at ¶¶ 40, 49 (Presentence Report)), the defendant is not entitled to relief under *Johnson*. In other words, the "residual clause" was not used to enhance the defendant's sentence. I will therefore deny the motion with prejudice.

I will not issue a certificate of appealability. The defendant "must make a substantial showing of the denial of a constitutional right" to obtain such a certificate; that is, "a showing that [the] issues are debatable among reasonable jurists, a court could resolve the issues differently, or the issues deserve further proceedings." *Garrett v. United States*, 211 F.3d 1075, 1076 (8th Cir. 2000) (citations omitted) (denying a certificate regarding a § 2255 motion for, among other reasons, because

the issue raised was clearly foreclosed by a prior decision of the Court of Appeals). The defendant has not done so.

IT IS ORDERED that:

- 1. The Motion to Vacate under 28 U.S.C. § 2255 (filing no. <u>59</u>) is denied and dismissed with prejudice.
 - 2. No certificate of appealability will be issued.
 - 3. A separate judgment will be issued.

DATED this 20th day of April, 2016.

BY THE COURT:

Richard G. Kopf

Senior United States District Judge